

STATE OF MICHIGAN  
IN THE SUPREME COURT

**HON. DIANE M. HATHAWAY**

Michigan Supreme Court  
3034 W. Grand Blvd.  
Suite 8-500  
Detroit, Michigan 48202

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MSC Docket No.  
Formal Complaint No. 91

**PETITION FOR INTERIM SUSPENSION**

On or about January 7, 2013, the Michigan Judicial Tenure Commission (JTC) authorized a formal complaint (FC 91) against Hon. Diane Marie Hathaway (Respondent), currently a Justice of the Michigan Supreme Court<sup>1</sup>, and the filing of a Petition for Interim Suspension. This petition is accompanied by a sworn affidavit, as required by MCR 9.219(B), from JTC Keeper of Records Camella Thompson (Attachment 1) and a Verification of Complaint of Forfeiture (*United States of America v Certain Real Property located at 2709 Butler Bay Drive N. Windermere, Florida*, United States District Court, Eastern District of Michigan Case No. 12-15103) by Special Agent Philip D. Reed of the Federal Bureau of Investigation (included in Attachment 2). In support of this petition, the Commission states as follows:

1. Respondent is, and at all material times was, a justice of the Supreme Court, State of Michigan.

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<sup>1</sup> Respondent is disqualified from considering this petition. See MCR 2.003; MCR 9.204(A); *In re Justin*, 490 Mich 394 (2012).

2. As a judge, Respondent is subject to all the duties and responsibilities imposed on her by the Michigan Supreme Court, including those under the Code of Judicial Conduct, and is subject to the standards for discipline set forth in MCR 9.104 and MCR 9.205.

3. Respondent has been a licensed real estate broker since 1987.

### **UNDERLYING FACTS**

4. Respondent and her husband, Michael Kingsley (“Kingsley”) owned property located at 15834 Lakeview Court, Grosse Pointe Park, Michigan (“Lakeview Court property”) on August 14, 2001, until they sold it in a short sale to Robert and Kathleen Garvey (“the Garveys”) in November 2011.

5. Until that short sale, Respondent and Kingsley maintained the Lakeview Court property as their primary residence, and ING Bank or ING Direct (“ING”) held a mortgage on it.

6. On or about December 8, 2008, Respondent spoke by phone with a representative of ING, inquiring about a possible short sale of the Lakeview Court property.

7. As a result of that conversation, ING sent Respondent and/or Kingsley a Financial Worksheet used to apply for a short sale, consisting of a cover letter and a Customer Information Summary.

8. On January 26, 2009, Respondent had another conversation with a representative of ING, stating that she wanted to do a short sale but was not certain if Kingsley had received the financial worksheet.

9. That same day, the ING representative sent another financial worksheet to Respondent and Kingsley, by both regular mail and e-mail.

10. Neither Respondent nor Kingsley submitted the financial worksheet or any documents required to apply for a short sale to ING in 2008 or 2009.

11. On January 25, 2010, Respondent again contacted ING and spoke with a representative about the short sale process.

12. On September 27, 2010, Respondent spoke with two different representatives of ING and again discussed a short sale for the Lakeview Court property.

13. In October or November 2010, Respondent and Kingsley retained the law firm of Aronoff & Linnell to represent them regarding the submission of a short sale application to ING relating to the Lakeview Court property.

14. On November 19, 2010, Respondent, together with her attorney Richard Linnell ("Linnell"), spoke on the telephone with a representative of ING regarding a possible short sale for Lakeview Court.

15. During that conversation, Respondent and Linnell discussed Respondent's financial status with the ING representative, and Linnell represented that Respondent would be retiring "next year" (*i.e.*, in 2011).

16. Respondent, who participated in that conversation, did not dispute that statement or otherwise advise the ING representative that it was erroneous.

17. During the conversation, Linnell further advised the ING representative that Respondent and/or Kingsley were being sued for a seven-figure "loan."

18. Since 2008, Kingsley had been engaged in litigation regarding the 2005 sale of an apartment complex located at 12850 Woodward, Highland Park, Michigan.

19. The ING representative stated that those facts did not support a financial hardship, as they were hypothetical.

20. ING sent another copy of the financial worksheet to Respondent and/or Kingsley following that November 19, 2010, telephone conversation.

21. On or about November 29, 2010, Respondent received an offer to purchase the Lakeview Court property from the Garveys for \$750,000.

22. On or around December 14, 2010, Aronoff & Linnell submitted a short sale application to ING on Respondent's behalf, which included various financial documents, and a Customer Information Summary prepared by Respondent and Kingsley.

23. Respondent and Kingsley identified their financial hardship as:

- (a) Substantially reduced income for Kingsley (lost his major client);
- (b) "Serious personal issues" which make it impossible for either party to keep their home;
- (c) Savings having been used up on house payments, maintaining property, property taxes, and defending lawsuit;
- (d) Having to borrow money to make last payment; and
- (e) "We can no longer afford the costs of this house."

24. At the time Respondent and Kingsley submitted the short sale application to ING, the outstanding balance on their mortgage on Lakeview Court was approximately \$1.4 million.

25. On or about April 21, 2011, negotiations resulted in the final purchase price of \$850,000 for the Lakeview Court property, pending the short sale approval.

26. On or about June 17, 2011, an ING representative sent an e-mail to attorney Steven Schulist (“Schulist”) of Aronoff & Linnell, making an inquiry about Respondent and Kingsley’s ownership of several other parcels of property, including:

- (a) Property located at 19229 Linville, Grosse Pointe Woods, Michigan (“the Linville property”);
- (b) Property located at 2709 Butler Bay Drive North, Windermere, Florida (“the Florida property”); and
- (c) 15812-14 Windmill Pointe, Grosse Pointe Park, Michigan (“the Windmill Pointe property”).

27. In June 2011, Respondent provided the following information to Mr. Schulist, in response to his inquiry, which he then passed on to ING:

- (a) Respondent’s stepson, Michael Kingsley, Jr., owned the Linville property;
- (b) Respondent and Kingsley did not own the Florida property;
- (c) Respondent and Kingsley did not own the Windmill Pointe property.

28. Respondent withheld from ING, while the short sale application was still pending and while Respondent was claiming a financial hardship, that:

- (a) Regarding the Florida property
  - i. Respondent and Kingsley *had* owned the Florida property, having purchased it on January 18, 1999.

It was unencumbered by any mortgage or other debt, and had a 2010 assess market value (based on tax records) of \$664,683;

- ii. In March 2010, they transferred it to Kingsley's daughter (Respondent's step-daughter) Kathryn Sterr ("Sterr") for \$10;
  - iii. A gift tax return for the transfer of the Florida property was due no later than April 18, 2011. Respondent did not submit it until May 8, 2012.
  - iv. Sterr never moved in to the Florida property and never lived there;
  - v. Kingsley continued to pay the real estate taxes and the utilities on the Florida property, and he was still paying them in June 2011
- (b) Respondent's stepdaughters Sterr and Sarah Kingsley owned the Linville property, not her stepson, Michael Kingsley, Jr.;
- (c) Regarding the Windmill Pointe property
- i. In April 2010, Respondent purchased the property for \$168,000 cash;
  - ii. In September 2010, Respondent transferred it to Kingsley's son (Respondent's stepson) Michael Kingsley, Jr. for \$100; and
  - iii. A gift tax return for the transfer of Windmill Pointe was due no later than April 18, 2011. Respondent did not submit it until May 8, 2012.

29. Respondent later admitted transferring the Florida property to Sterr (her step-daughter) "because Mr. Kingsley was involved in a lawsuit . . . [and] he

did not want the property to be put in his name and for that reason [Respondent and Kingsley] transferred it to his eldest daughter, Kathryn Sterr.”

30. Respondent also failed to disclose to ING, while the short sale application was still pending and while Respondent was claiming a financial hardship, that:

- (a) She owned another house, unencumbered by a mortgage or other debt, located at 811 Beaconsfield, Grosse Pointe Park, Michigan, which she maintained as a rental property;
- (b) On March 22, 2011, while the short sale application was pending, Respondent provided her stepdaughter, Sarah Kingsley, with \$195,000 to purchase a home located at 1030 Balfour, Grosse Pointe Park, Michigan (“Balfour”).
- (c) No mortgage or loan document was ever filed with the Wayne County Register of Deeds reflecting that the Balfour property secured any indebtedness by Sarah Kingsley to Respondent.

31. On or about August 27, 2011, an ING representative e-mailed Respondent’s attorney’s office, inquiring whether Respondent had retired and what the status of the lawsuit was, requesting documentation on each issue.

32. On September 2, 2011, Linnell forwarded ING’s requests for information to Respondent and Kingsley. The e-mail noted that the application for the short sale would not be submitted for written approval until Respondent and Kingsley provided:

(a) A report on Respondent's retirement. Linnell had advised the ING representative that she had not yet retired, but that it was anticipated this would be happening in the foreseeable future. Linnell reported that was not acceptable to the ING representative, and he asked Respondent for a more substantive response he could give to ING.

(b) The status of the lawsuit against Kingsley.

33. On or about September 6, 2011, Linnell reported to ING in an e-mail that Respondent was going to meet with fellow members of the court and "political people" in the first part of January to determine her retirement date, and that she expected to retire "shortly thereafter."

34. The e-mail also reported to ING that the lawsuit against Kingsley was set for evaluation in October 2011, the trial was set for the spring, and the amount in controversy was \$1.2 million.

35. On or about October 21, 2011, ING approved the short sale of the Lakeview Court property, contingent on Respondent and Kingsley contributing \$10,000 toward the property taxes.

36. On or about October 23, 2011, Schulist e-mailed ING that Respondent and Kingsley planned on moving into a home that their "daughter" owned, and would pay rent to her.

37. Respondent failed to disclose to ING that the home she and Kingsley planned to move into and pay rent on was the Balfour property, the one that Kingsley's daughter (Respondent's stepdaughter) Sarah Kingsley had purchased for \$195,000 cash, which Respondent had provided her in March 2011, while the short sale application was still pending and while Respondent was claiming a financial hardship.

38. On or about October 24, 2011, ING issued a notice to Respondent and Kingsley that the short sale was approved, contingent on the transaction closing by November 9, 2011.

39. Between November 7 and 9, 2011, the sale of the Lakeview Court property to the Garveys closed for \$850,000.

40. On or about November 21, 2011, ING discharged the mortgage on the Lakeview Court property, eliminating approximately \$600,000 of debt for Respondent and Kingsley.

41. On December 1, 2011, Sarah Kingsley deeded the Balfour property to Respondent and Kingsley for less than \$100.

42. Respondent and Kingsley maintained the Balfour property as their residence at least through September 2012, and through that date owned the property unencumbered by a mortgage.

43. On March 5, 2012, Sterr deeded the Florida property back to Respondent and Kingsley for \$10.

### **PROCEDURAL HISTORY**

44. After an investigation, the Commission authorized the submission of a 28-day letter to Respondent pursuant to MCR 9.207(D)(1), which was sent to her (via counsel) on December 4, 2012.

45. The answer to the 28-day letter was due on January 2, 2013. Respondent requested additional time to answer, but, given the deleterious effect on the judiciary in leaving this matter unresolved, that request was denied.

46. The Commission authorized the filing of Formal Complaint No. 91 against Respondent on January 7, 2013 (Attachment 3).

47. The complaint alleges that Respondent engaged in misconduct, based on the following actions relating to the short sale, purchase and transfer of property, and representations to the Commission in its investigation:

- a. The creation of an artificial financial hardship to obtain approval of a short sale transaction;
- b. Making misleading representations concerning an imminent retirement from the bench, to create the false impression of an anticipated substantial reduction in income;
- c. The fraudulent conveyance of assets to avoid a creditor and/or potential creditor, in violation of MCL 566.34;
- d. Making false pretenses (a/k/a criminal fraud), in violation of MCL 750.218;
- e. Financial institution fraud (a/k/a bank fraud), in violation of 18 USC 1344;
- f. Money laundering, in violation of 18 USC 1956;
- g. Various violations of federal tax law; and
- h. Misrepresentations to the Commission in its investigation, as reflected by statements contained in her comment dated September 28, 2012, and as summarized below.

**RESPONDENT'S COMMENTS TO THE COMMISSION -- ADMISSIONS**

48. At the Commission's request, Respondent, through her attorney, provided her written comments on the above matters on September 28, 2012.

49. Respondent admitted that she and Kingsley transferred property located in Windermere, Florida to Kingsley's daughter, Kathryn Sterr, on March 15, 2010, for \$10.

50. As supported by the affidavit of Judicial Tenure Commission Keeper of Records Camella Thompson (Attachment 1), Respondent stated in her comment:

- (a) “Accordingly, in March 2010, Mr. Kingsley asked Justice Hathaway to honor their agreement to relinquish her interest in the property. Justice Hathaway agreed. But Mr. Kingsley was also involved in a lawsuit<sup>[2]</sup> and he did not want to transfer the property into his own name during the time the litigation was pending. He therefore decided to transfer the home to his eldest daughter, Kathryn Sterr.”
- (b) “Mr. Kingsley asked Justice Hathaway to honor their agreement and to relinquish her interest in the Florida property. She agreed. But because Mr. Kingsley was involved in a lawsuit referenced earlier in this communication, he did not want the property to be put in his name and for that reason, they transferred it to his eldest daughter, Kathryn Sterr. Unfortunately, Kathryn’s circumstances dramatically changed. She got divorced and because of problems personal to her, she wanted to deed the property back to her father. Mr. Kingsley and Justice Hathaway had reconciled but he still did not want the property in his name because the lawsuit was still pending.”

51. Respondent’s statements regarding the transfer of the Florida property to Kingsley’s stepdaughter due to the existence of the lawsuit reflect an admission to her participation in conduct violating MCL 566.34, addressing the fraudulent conveyance of the property to avoid a potential creditor.

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<sup>2</sup> In November 2008, Kingsley became involved in litigation concerning the sale of an apartment complex in Highland Park, Michigan, in which he sold his ownership interest in 2005. He continues to be a party to litigation relating to the transfer of the property interest through this date.

## **RESPONDENT'S COMMENTS TO THE COMMISSION- MISREPRESENTATIONS**

52. In her comment to the Commission dated September 28, 2012,

Respondent made various representations that are not true, including:

- (a) Several assertions to the Commission that she had no contact with representatives of ING, when she had communications with representatives on at least five occasions;
- (b) An assertion to the Commission that she represented to ING (through counsel) that she “no longer owned” the Florida and Windmill Pointe properties, when during the short sale application process she actually represented (through counsel) to ING that she *did not own* the properties (implying that she never had an ownership interest);
- (c) Denials to the Commission that she ever represented to ING that her retirement from the Michigan Supreme Court was imminent, when she in fact allowed that representation to be made in a telephone conversation in which she participated on November 19, 2010, and in e-mail sent by counsel, based on information provided by Respondent, on or around September 6, 2011;
- (d) Several assertions that Respondent and Kingsley were not considering a short sale when the Florida and Windmill Pointe properties were deeded to Kingsley's children, when she had two or three communications with ING representatives about a possible short sale prior to the date of each transaction; and
- (e) A representation that she did not receive a copy of a Customer Information Summary (the document used to provide an applicant's financial status when applying for a short sale) from ING until some time shortly before December 2010, when the form was sent to Respondent

by ING on or around December 8, 2008 and January 26, 2009.

### **THE CIVIL FORFEITURE COMPLAINT AGAINST RESPONDENT**

53. While the Commission's investigation was pending, the United States of America filed a civil complaint for forfeiture as to property owned by Respondent and Kingsley in Windermere, Florida (*United States of America v Certain Real Property located at 2709 Butler Bay Drive N. Windermere, Florida*, United States District Court, Eastern District of Michigan Case No. 12-15103).

54. That complaint is based on allegations that the Florida property constitutes proceeds, or property traceable thereto, of financial institution fraud in violation of 18 USC 1344, and money laundering in violation of 18 USC 1956, relating to the short sale transaction on the Lakeview Court property. (Attachment 2)

55. That complaint is verified by Special Agent Philip D. Reed of the Federal Bureau of Investigation.

### **RAMIFICATIONS OF RESPONDENT'S CONDUCT**

56. Respondent's conduct in this matter has been widely publicized.

57. Respondent and Kingsley's actions have led to the filing of a complaint for civil forfeiture, which references acts by Respondent that constitute financial institution fraud and money laundering under the federal criminal code.\

58. Respondent is one of seven individuals who hold a seat in the Michigan Supreme Court, which is the pinnacle of the Michigan judicial system.

59. The duties of office of a Supreme Court Justice include presiding over cases where allegations of judicial misconduct are presented to the court for consideration.

60. In 2012 alone, Respondent has considered two formal complaints and on two other matters submitted by consent, including two decisions where judges engaged in conduct as to which Respondent agreed removal from office was a fitting sanction.

61. The allegations in this proceeding against Respondent, a sitting Justice of the Michigan Supreme Court, are unprecedented in Michigan judicial disciplinary history.

62. The Michigan Code of Judicial Conduct ("MCJC"), as to which Respondent is one of the seven final arbiters in this state, provides in Canon 1:

A judge should participate in establishing, maintaining, and enforcing, and should personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved.

63. The MCJC further provides in Canon 2: “Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges.”

64. Respondent’s actions as summarized above and set forth in detail in Formal Complaint 91 constitutes blatant and brazen violations of the MCJC, that when considered in accordance with the fact that she holds the highest judicial office in Michigan, mandate Respondent’s suspension from judicial office during the pendency of this formal proceeding.

65. Respondent’s immediate suspension is necessary for the proper administration of justice, to protect the integrity of the judiciary, and most importantly, to protect the public.

66. Pursuant to MCR 9.219 (A)(1), the Commission states that on January 7, 2013, the Commission hand-delivered a copy of this Petition, a Motion for Immediate Consideration, Formal Complaint 91, and Proof of Service to Respondent’s counsel. The Commission estimates that it will submit its recommendation to the Supreme Court no later than 120 days following the submission of the master’s report.

**WHEREFORE**, pursuant to MCR 9.219, the Michigan Judicial Tenure Commission requests that this Honorable Court enter an order immediately suspending Respondent from all her duties as judge of the Michigan Supreme Court until the final adjudication of any formal proceedings.

Respectfully submitted,

JUDICIAL TENURE COMMISSION  
OF THE STATE OF MICHIGAN

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January 7, 2013